

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

KAY BROCK,

Claimant,

v.

PILOT TRAVEL CENTERS,

Employer,

and

LIBERTY INSURANCE CORPORATION,

Surety,

Defendants.

IC 2012-010234

**ORDER DENYING REQUEST FOR
RECONSIDERATION**

Filed August 20, 2015

On July 22, 2015, Defendants filed a request for reconsideration of the Commission's July 2, 2015 Order. Defendants argue that Dr. Weiss' opinion is insufficient to show that Claimant's functional capacity for sedentary work is causally related to her industrial accident. Defendants are very critical of Dr. Weiss' opinion, and that Dr. Weiss never clarified his "inconsistencies" through post-hearing deposition. On the other hand, Defendants believe that Dr. Kadyan provided consistent and thorough opinion based on a reasonable degree of medical probability. Defendants would like the Commission to reconsider whether Dr. Weiss' testimony meets the required legal standard.

On July 24, 2015, Claimant filed a response. Claimant counters that medical causation was not in dispute, and both Drs. Kadyan and Weiss concluded that Claimant suffered a herniated lumbar disc from her work-related accident. Claimant argues that Defendants are

parsing Dr. Weiss' report out of context even though the Commission had many reasons to rely on Dr. Weiss' factually and legally sound opinion. Dr. Weiss provided the most recent evaluation of the Claimant's limitations, and conducted a physical examination with testing of Claimant's limitations. Claimant requests that the Commission uphold the decision.

On August 3, 2015, Defendants filed a reply, stating that they are not challenging causation, but rather whether Dr. Weiss attributed Claimant's functional capacity for sedentary work to the industrial accident or another factor, such as age. Defendants reiterated the criticism that Dr. Weiss' report was full of inconsistencies and should be reconsidered.

DISCUSSION

Under Idaho Code § 72-718, a decision of the Commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated; provided, that within twenty (20) days from the date of filing the decision any party may move for reconsideration or rehearing of the decision. The Commission is not compelled to make findings on the facts of the case during reconsideration. Davison v. H.H. Keim Co., Ltd., 110 Idaho 758, 718 P.2d 1196. The Commission may reverse its decision upon a motion for reconsideration, or rehearing of the decision in question, based on the arguments presented, or upon its own motion, provided that it acts with the time frame established in Idaho Code § 72-718. See, Dennis v. School District No. 91, 135 Idaho 94, 15 P.3d 329 (2000) (citing Kindred v. Amalgamated Sugar Co., 114 Idaho 284, 756 P.2d 410 (1988)).

In its June 7, 2013 decision, the Commission found that Claimant had proven Defendants' liability for additional medical benefits for past and ongoing palliative medical care including Methocarbamol and Tramadol, as prescribed by Dr. Westbrook, and a pool exercise program, as suggested by Dr. Weiss. Claimant proved she sustained permanent partial

/s/
Thomas P. Baskin, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of August, 2015, a true and correct copy of the foregoing **ORDER DENYING REQUEST FOR RECONSIDERATION** was served by regular United States Mail upon each of the following:

LEA KEAR
PO BOX 6358
BOISE, ID 83707

TAYLOR MOSSMAN-FLETCHER
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/s/